

## Environmental Protection Agency

## § 40.145-3

### § 40.145 Supplemental grant conditions.

In addition to the EPA general grant conditions (40 CFR part 30, subpart C), all grants are awarded subject to the following requirements:

(a) The project will be conducted in an environmentally sound manner.

(b) In addition to the notification of project changes required pursuant to 40 CFR 30.900, prior written approval by the grants officer is required for project changes which may (1) alter the approved scope of the project, (2) substantially alter the design of the project, or (3) increase the amount of Federal funds needed to complete the project. No approval or disapproval of a project change pursuant to 40 CFR 30.900 or this section shall commit or obligate the United States to an increase in the amount of the grant or payments thereunder, but shall not preclude submission or consideration of a request for a grant amendment pursuant to 40 CFR 30.900-1.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975]

### § 40.145-1 Resource Conservation and Recovery Act.

Programs for which a Federal grant is awarded by the Environmental Protection Agency to a State, municipal, interstate or intermunicipal agency, or to any public authority, agency or institution, under the Resource Conservation and Recovery Act, shall be the subject of public participation consistent with part 249 of this chapter.

[42 FR 56057, Oct. 20, 1977]

### § 40.145-2 Federal Water Pollution Control Act.

(a) No person in the United States shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving assistance under the Act.

(b) Grants under section 107 are awarded subject to the conditions—

(1) That the State shall acquire any land or interests therein necessary for such project to assure the elimination or control of acid or other mine water pollution; and

(2) That the State shall provide legal and practical protection to the project area to insure against any activities which will cause future acid or other mine water pollution.

### § 40.145-3 Projects involving construction.

Research and demonstration grants for projects involving construction shall be subject to the following conditions:

(a) The applicant will demonstrate to the satisfaction of the grants officer that he has or will have a fee simple or such other estate or interest in the site of the project, and rights of access, as the grants officer finds sufficient to assure undisturbed use and possession for the purpose of construction and operation for the estimated life of the project; and in the case of projects serving more than one municipality, that the participating communities have such interests or rights as the grants officer finds sufficient to assure their undisturbed utilization of the project for the estimated life of the project.

(b) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by offerors should be clearly specified.

(c) [Reserved]

(d) Subagreements for construction work may be negotiated when advertising for competitive bids is not feasible; however, the grantee must adequately demonstrate its need to contract with a single or sole source. All such subagreements are subject to prior approval by the grants officer.

(e) Construction work will be performed by the fixed-price (lump sum) or fixed-rate (unit price) method, or a combination of these two methods, unless the grants officer gives advance written approval to use some other

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method of contracting. The cost-plus-a-percentage-of-cost method of contracting shall not be used. Adequate methods of advertising for and obtaining competitive sealed bids will be employed prior to award of the construction contract. The award of the contract will be made to the responsible bidder submitting the lowest responsive bid, which shall be determined without regard to State or local law whereby preference is given on factors other than the specification requirements and the amount of bid. The grantee must promptly transmit to the grants officer copies of bid protests, decisions on such protests, and related correspondence. The grants officer will cause appropriate review of grantee procurement methods to be made.

(f) On construction contracts exceeding \$100,000, each bidder must furnish a bid guarantee equivalent to 5 percent of the bid price. In addition, the contractor awarded the contract must furnish performance and payment bonds, each of which shall be in an amount not less than 100 percent of the contract price. Construction contracts less than \$100,000 shall follow the State or local requirements relating to bid guarantees, performance bonds, and payment bonds.

(g) The construction of the project, including the letting of contracts in connection therewith, shall conform to the applicable requirements of State, territorial, and local laws and ordinances to the extent that such requirements do not conflict with Federal laws.

(h) The grantee will provide and maintain competent and adequate engineering supervision and inspection for the project to insure that the construction conforms with the approved plans and specifications.

(i) Any construction contract must provide that representatives of the Environmental Protection Agency and the State, as appropriate, will have access to the work whenever it is in preparation or progress and that the contractor will provide proper facilities for such access and inspection. The contract must also provide that the grants officer, the Comptroller General of the United States, or any authorized representative shall have access to any

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books, documents, papers, and records of the contractor which are pertinent to the project for the purpose of making audit, examination, excerpts, and transcriptions thereof.

(j) The grantee agrees to construct the project or cause it to be constructed in accordance with the application, plans and specifications, and subagreements approved by EPA in the grant agreement or amendments.

(k) In addition to the notification of project changes pursuant to 40 CFR 30.900, a copy of any construction contract or modifications thereof, and of revisions to plans and specifications must be submitted to the grants officer.

[38 FR 12784, May 15, 1973, as amended at 40 FR 20083, May 8, 1975; 73 FR 15922, Mar. 26, 2008]

#### § 40.150 Evaluation of applications.

Every application for a research or demonstration grant will be evaluated by appropriate EPA staff in terms of relevancy and the applicable criteria set forth in § 40.140. Only applications considered relevant to EPA research and demonstration objectives will receive further consideration and be subjected to additional review. Relevancy will be measured by program needs and priorities as defined in the Agency's current planned objectives. Relevancy, coupled with the results of technical review, will provide the basis for funding recommendations.

(a) *New applications.* Applications considered relevant to EPA research and demonstration objectives will be reviewed for technical merit by at least one reviewer within EPA and at least two reviewers outside EPA. Review by a National Advisory Council is statutorily required for radiation grants.

(b) *Continuation applications.* Continuation applications will be reviewed by appropriate EPA staff only. Recommendations for continuation of funding will be based on progress toward the accomplishment of the goals set forth for the project and continued Agency needs and priorities.

#### § 40.155 Availability of information.

(a) The availability to the public of information provided to, or otherwise